



Paper No. 13

COPY MAILED

JUN 14 2001

**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of
Mazhar, Nadalin, Larkin, Warne
Application No. 09/411,171
Filed: October 1, 1999
Attorney Docket No. 3797.80030
For: Windows Radio Toolbar

:
:
:
: **DECISION REFUSING**
: **STATUS UNDER 37 CFR**
: **1.47(a)**
:

This is in response to the request for reconsideration of petition under 37 CFR 1.47(a), filed May 25, 2001.

The petition is **dismissed**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Any extensions of time will be governed by 37 CFR 1.136(a).

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee; and
- (4) a statement of the last known address of the non-signing inventor.

Applicant lacks item (2), as set forth above.

As to item (2), An oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 still has not been presented. The declaration submitted does not set forth Kevin Warne's citizenship. An oath or declaration in compliance with 37 CFR 1.63 and 1.64 is REQUIRED. See MPEP 409.03(a).

37 CFR 1.183, Suspension of Rules, states (in part):

"In an extraordinary situation, when justice requires, any requirement of the regulation in this part which is not a requirement of the statute may be suspended or waived by the Commissioner or the Commissioner's designees..."

Additionally, MPEP 602.03 states, "requirements of the statute, e.g., that the applicant state his or her citizenship...cannot be waived.

The requirement that the citizenship of an inventor be provided on the declaration is a requirement established by statute and cannot be suspended or waived. See 35 USC 115. Accordingly, this information must be provided in order to submit a declaration in compliance with 35 USC 115 and 116, and 37 CFR 1.63 and 1.64.

Please note, the application file does not indicate a change of address has been submitted in this case, although the address given on the petition differs from the address of record. If petitioner desires to receive future correspondence regarding this application, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the petitioner at the address given on the petition. However, all future correspondence will continue to be directed to the address of record until such time as appropriate instructions are received to the contrary.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, DC 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA

Telephone inquiries related to this decision should be directed to
Petitions Attorney Edward Tannouse at (703) 306-9200.

A handwritten signature in black ink, appearing to read "B. Flanagan", followed by a horizontal line and the word "For".

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Timothy C. Meece
Banner & Witcoff
10 South Wacker Drive
Suite 3000
Chicago, IL 60606